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# United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

September 4, 2001

The Honorable Hector Barreto  
Administrator, Small Business Administration  
409 Third Street SW  
Washington, DC 20416

Dear Administrator Barreto:

At my request, the General Accounting Office (GAO) prepared a study of the process used for setting agency goals for small business contracting and for measuring actual achievements toward those goals. The report shows many issues that, I think, will come as a surprise to many users of the small business contracting statistics.

Generally, the GAO has found the goaling and reporting processes to be unduly opaque, as suggested by the report title, "Small Business: More Transparency Needed in Prime Contract Goal Program." Most consumers of small business contracting statistics probably are not aware, for example, that about 10% of the Government's purchases are excluded from the procurement base. Unlike the rest of the Government's purchasing dollars, 23% of these dollars are not targeted toward small business. Moreover, the reduction in the total procurement base causes the actual small business participation rate to seem higher than it would otherwise, since the dollars actually bought from small business are measured against a smaller total base.

Many of these exclusions have a sound rationale behind them. I do not mean to suggest, nor would I support, measures to undo all the exclusions detailed in the GAO report. For example, foreign military sales of the Department of Defense are properly excluded from the base, for several reasons. First, the procurement is only nominally a U.S. Government procurement, prior to being resold to the purchasing country. Second, the timing of these sales is not necessarily under the control of agency contracting officers, and therefore it would be impossible to factor such sales into the calculation of agency goals. Finally, the source selection decision is essentially made by the ultimate purchasing country, when it selects which weapons to buy.

Other sales are excluded from the base due to express statutory language. Whatever may be the wisdom of these exclusions, the SBA has no choice but to comply with statutory direction.

Thus, my concern is not that these exclusions are made at all. Instead, I am concerned that most people are unaware of these factors when they use small business statistics. I agree with the GAO that the process must be more transparent. Exclusions must be on the public record, readily available, with clear explanations and justifications.

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The GAO's other findings with respect to the SBA goal-setting guidance are equally troubling. The GAO notes that tardiness in distributing the guidance and the request for agency goals can affect the ability of the agencies to have their goals in-place by the start of the fiscal year. In Fiscal 1999, the SBA did not send its letter requesting goals (usually accompanied by the guidance document) to the various agencies until two weeks after the fiscal year had begun.

Common sense suggests that agency contracting personnel and small business advocates need to have their goals determined before the fiscal year begins. The later the goal is set, the more contracts will have been awarded before the goal is in-place. This means fewer contracting opportunities are available for agencies to plan as they attempt to achieve those goals once they are determined. Although the GAO did not find a clear link between timeliness of goal-setting and success in goal achievement, an excessively tardy goal at some point must inevitably frustrate the best efforts to plan and achieve goals.

Thus, the SBA guidance, as managed in the past Administration, has not fulfilled the need either for transparency or for timeliness. Users of contracting statistics do not really know what those numbers represent, without readily available, on-the-record disclosure of excluded contracts. Generating a new guidance document every year becomes a chore that, if not completed promptly, results in delays in setting goals.

In my view, one way to overcome these problems--which I offer for your serious consideration--is to have the list of contracting exclusions adopted as part of a formal rulemaking process. Publication in the Federal Register, with an explanation and justification and a period of public comment, would serve the need for disclosure. The final guidance could be codified in the Code of Federal Regulations as a reference for users of contracting statistics. Changes to the list of exclusions would still be possible, but only as part of a new rulemaking, with attendant disclosure and public comment.

Having the list adopted as a regulation also would prevent undue delays in setting goals for the following fiscal year. The list of exclusions would be known in advance by agency small business advocates. Although the SBA could include a copy of the list in its annual letter requesting goals, agencies would not need to wait until that letter was issued to know what exclusions should apply in calculating their goals. This should reduce unnecessary delay in the goal-setting process.

As the new SBA Administrator, seeking to learn from past difficulties at the agency and wanting to make appropriate improvements, you should review whether the goal-setting guidance can currently be adopted as a regulation. I would appreciate hearing back from you by September 30, 2001, whether such a regulation would fall within the Administrator's existing authority, or whether new legislation would be required. If new legislation is necessary, I intend to introduce it later this year. I also ask you to review whether all the exclusions authorized under the previous Administration, amounting to almost \$23 billion in 2000, are justifiable on their merits.

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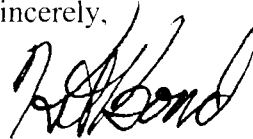
Finally, I understand the SBA is putting renewed emphasis on agencies getting their goals adopted by the beginning of the fiscal year. I would appreciate hearing from you regarding which agencies have agreed to goals by September 30. Also, because meeting the Governmentwide goal of 23% is statutorily required, and because I know the SBA has had some difficulty meeting this overall threshold, I encourage you to consider writing directly to the heads of any uncooperative agency. This step should be taken before the SBA considers assigning goals, because I doubt that agency heads are even aware of the problem. As the GAO report points out, the Small Business Act requires negotiation in the goal-setting process. Although I understand the reasons why the SBA has had to resort to assigning goals in the past, I urge you to take one final step--direct communication with agency heads--as part of your negotiations. A negotiated goal is more likely to be accepted as legitimate by the other agencies, and agency acceptance of the goal is essential to get the agency to make a serious effort at achieving the goal.

In summary, I ask you to provide the following by September 30, 2001:

- (1) your opinion whether the SBA guidance may be adopted as a formal rulemaking;
- (2) a commitment to review the existing exclusions to determine the rationale behind them, and whether that rationale is still valid;
- (3) a list of agencies not agreeing to Fiscal 2002 goals by the end of Fiscal 2001; and
- (4) copies of letters you have sent to the heads of recalcitrant agencies as part of your negotiations on goal-setting.

If you have questions about this matter, please call Cordell Smith of my staff at the Senate Committee on Small Business and Entrepreneurship at (202)224

Sincerely,



Christopher S. Bond  
Ranking Member

cc: John Whitmore, SBA  
Susan Wiles, SBA